

Message Text

CONFIDENTIAL

PAGE 01 BONN 16859 01 OF 02 111756Z
ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-07
L-03 NSAE-00 PA-01 PRS-01 SP-02 SS-15 IO-13
NSCE-00 SSO-00 USIE-00 INRE-00 ACDA-07 EURE-00
TRSE-00 OMB-01 EB-08 /077 W
-----040551 111803Z /40

O R 111741Z OCT 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 2169
USMISSION USBERLIN
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USNATO

C O N F I D E N T I A L SECTION 01 OF 02 BONN 16859

E.O. 11652: GDS
TAGS: PGOV, BQG, WB
SUBJECT: SPANDAU LOCK

REFS: (A) USBER 2538; (B) BONN 16002; (C) USBER 2627

BEGIN SUMMARY: THE UK NOW AGREES THAT IT IS NOT
ESSENTIAL FOR THE SENAT STATEMENT ON THE SPANDAU LOCK
TO BE MADE IN CONNECTION WITH THE GDR/SENAT SIGNING
CEREMONY. THE FRENCH REMAIN UNMOVED AND, IN RESPONSE
TO A FRENCH REQUEST FOR NEW INSTRUCTIONS, THE QUAI HAS
REPEATED ITS INSISTENCE ON THE SENAT STATEMENT. THE
SENAT HAS APPARENTLY NOT YET SOUGHT THE FRG'S ASSISTANCE
BUT MAY DO SO THIS WEEK. FOR THE MOMENT, WE SUGGEST
IT BE LEFT TO THE FRG (IF IT AGREES THAT NO SENAT
STATEMENT AT THE CEREMONY IS NECESSARY) TO SEEK TO BRING
THE FRENCH AROUND. END SUMMARY

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PAGE 02 BONN 16859 01 OF 02 111756Z

1. THE ALLIED BONN GROUP REPS MET TRIPARTITELY ON
OCTOBER 4 AND 7 TO DISCUSS THE DIFFERING VIEWS IN
BERLIN ON THE NEED FOR A SENAT STATEMENT IN CONNECTION
WITH THE SIGNING OF THE SPANDAU LOCK AGREEMENT. THE
US REP AGAIN ARGUED THAT IN VIEW OF THE STATEMENT WHICH
THE GDR PROPOSES TO MAKE (REF A) IF THE SENAT MAKES A
STATEMENT, IT WOULD BE BETTER FOR THE SENAT TO MAKE NO

STATEMENT AT THE CEREMONY THE US REP NOTED THAT THERE ARE POINTS IN THE DRAFT GDR STATEMENT WHICH ARE NOT REFUTED BY THE SENAT STATEMENT AND THAT IF THE GDR WERE TO ISSUE ITS STATEMENT IN CONNECTION WITH THE SIGNING CEREMONY, IT WOULD APPEAR NECESSARY FOR THE ALLIES TO ISSUE A STATEMENT (ALSO IN CONNECTION WITH THE CEREMONY) WHICH WOULD REFUTE THOSE POINTS. SUCH A PROCEDURE WOULD NOT BE HELPFUL TO THE SENAT AND FRG'S ATTEMPTS TO NEGOTIATE PRACTICAL IMPROVEMENTS BENEFICIAL TO BERLIN. HOWEVER, HE SUGGESTED THAT THE ALLIES SHOULD BE PREPARED TO ISSUE A STATEMENT REFUTING THE GDR STATEMENT IF LATTER IS MADE SUBSEQUENT TO THE SIGNING CEREMONY.

2. THE UK REP (EYERS) NOW AGREES WITH OUR POSITION, ON THE GROUND THAT THE GDR STATEMENT COULD BE CONSIDERED PART OF THE "TRAVAUX PREPARATOIRES" OF THE AGREEMENT AND THEREFORE LEGALLY DAMAGING TO THE ALLIED POSITION THAT THE GDR HAS NO SOVEREIGNTY OVER THE WATERWAYS IN WEST BERLIN. EYERS' CONCERN IS SUPPORTED BY ARTICLE 31(2) OF THE VIENNA CONVENTION ON THE LAW OF TREATIES, WHICH STATES IN PART THAT "THE CONTEXT FOR THE PURPOSE OF THE INTERPRETATION OF A TREATY SHALL COMPRISE, IN ADDITION TO THE TEXT, INCLUDING ITS PREAMBLE AND ANNEXES: ... (B) ANY INSTRUMENT WHICH WAS MADE BY ONE OR MORE PARTIES IN CONNEXION WITH

CONFIDENTIAL

PAGE 03 BONN 16859 01 OF 02 111756Z

THE CONCLUSION OF THE TREATY AND ACCEPTED BY THE OTHER PARTIES AS AN INSTRUMENT RELATED TO THE TREATY." WHILE THE ALLIES DO NOT CONSIDER THE PROPOSED AGREEMENT A

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PAGE 01 BONN 16859 02 OF 02 111757Z
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C O N F I D E N T I A L SECTION 02 OF 02 BONN 16859

TREATY, THE GDR CAN BE EXPECTED TO CHARACTERIZE IT AS SUCH. THE US, UK AND FRG ARE PARTIES TO THE VIENNA CONVENTION BUT FRANCE, THE GDR AND THE USSR ARE NOT.

3. THE FRENCH REP (GAUSSOT) SAID THAT HIS INSTRUCTIONS WERE TO INSIST ON THE SENAT'S STATEMENT BEING MADE IN CONNECTION WITH THE CEREMONY, SINCE THIS HAD BEEN PROPOSED TO THE GDR AS EARLY AS 1974 AND THAT THE SENAT'S FAILURE TO MAKE SUCH A STATEMENT, ESPECIALLY SINCE SUCH FAILURE WOULD BE A RESPONSE TO THE GDR THREAT TO ISSUE ITS OWN STATEMENT, MIGHT BE SEEN AS A CONCESSION BY THE ALLIES. WHEN IT WAS REVEALED THAT THE FRENCH MISSION IN BERLIN HAD NOT PROVIDED THE QUAI WITH THE FULL TEXT OF THE PROPOSED GDR STATEMENT, THE US AND UK REPS SUGGESTED THAT GAUSSOT DO SO AND REQUEST NEW INSTRUCTIONS. GAUSSOT INFORMED US ON OCTOBER 11
CONFIDENTIAL

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PAGE 02 BONN 16859 02 OF 02 111757Z

THAT THE QUAI, IN RESPONSE TO HIS REQUEST FOR NEW INSTRUCTIONS, HAS REPEATED ITS POSITION THAT IT IS ESSENTIAL FOR THE SENAT TO ISSUE ITS STATEMENT IN CONNECTION WITH THE CEREMONY SINCE TO DO OTHERWISE WOULD APPEAR TO BE A SIGN OF WEAKNESS ON THE PART OF THE SENAT AND THE ALLIES.

4. COMMENT: WE APPEAR TO BE AT AN IMPASSE WITH THE FRENCH. IT APPEARS THAT THE SENAT HAS NOT SOLICITED THE FRG'S ASSISTANCE IN THIS MATTER (REF B) BUT MAY DO SO WHILE FRG BONN GROUP REP VON BRAUNMUEHL IS IN BERLIN THIS WEEK. WE SUGGEST THAT FOR THE MOMENT WE LEAVE IT TO THE FRG TO SEEK TO BRING THE FRENCH AROUND.
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